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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

BOBBY J., Petitioner, v. SUPERIOR COURT OF DEL NORTE COUNTY, Respondent; DEL NORTE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES et al., Real Parties in Interest.	A160724 (Del Norte County Super. Ct. Nos. JVSQ19-6047, JVSQ19-6048, JVSQ19-6049)

Bobby J. (Father) petitions for issuance of a writ directing the juvenile court to vacate its order setting a permanency planning hearing under Welfare and Institutions Code section 366.26.[1] He contends the court erred in finding at the twelve-month review hearing that reasonable reunification services were provided to him and that active efforts were made to prevent the breakup of an Indian family. We deny the petition.

[1] All undesignated statutory references are to the Welfare and Institutions Code.

BACKGROUND

On April 12, 2019, the Del Norte County Department of Health and Human Services (Department) filed three petitions pursuant to section 300, subdivision (b), alleging that Father's children—10 year-old B.J., seven year-old B.J.J., and three year-old M.H.—were at substantial risk of harm as a result of their parents' failure to supervise them adequately (B.J. and B.J.J.), failure to provide adequate medical treatment (M.H.), and inability to provide regular care due to mental illness and substance abuse (all three children).[2]

The Department's detention report described Father's lengthy criminal history, much of it related to substance abuse. The family had two prior child welfare cases and had previously been provided with mental health and substance abuse services, parent education courses, and financial support. The detention report stated Father was an enrolled member of the Yurok Tribe, but the tribe had indicated the children were not eligible for membership. The Tolowa Dee-ni' Nation (Tolowa Nation) indicated the children may be eligible for enrollment.

On May 28, 2019, the juvenile court conducted a contested jurisdictional hearing. The Department's jurisdiction report and an addendum report contained additional information about Father's alleged abuse and neglect, as well as B.J.'s behavioral problems. From February to March 2019, the Department received five referrals for "abuse and neglect," reporting that Father had been using methamphetamines, displaying erratic behavior, and neglecting the children. When a social worker arrived at Father's home on March 27 to investigate the referrals, the worker found M.H. under the care of a person who appeared to be under the influence of

[2] The petitions alleged the children's mother was institutionalized at a mental health facility; she is not a party in this proceeding.

drugs. M.H.'s diaper was "full and sagging" and he had a rash on his chin that was "inflamed, crusty, and irritated." A neighbor reported that Father's older children "constantly" came over to ask for food.

The juvenile court sustained the allegations in the three section 300 petitions and scheduled a dispositional hearing. The Department's June 2019 disposition report recommended that the children remain in out-of-home placement and that the parents receive reunification services. The Department's case plan directed Father to attend the Men of the River program, a support network for Yurok men who had substance abuse or domestic violence issues. The Department's plan directed Father to obtain substance abuse treatment through a program the Tolowa Tribe offered called Tolowa Alcohol and Other Drugs (AOD), or through a similar program. The case plan also directed Father to submit to drug testing. The Department's plan directed Father to obtain mental health services through United Indian Health Services (UIHS) or Del Norte County Mental Health, and to sign a release of information for the Department. Finally, the Department referred Father to a parenting skills class.

Father's younger children were placed with their maternal grandparents, and B.J. was placed in a different home due to behavioral issues. Father's visitation was five hours minimum per week. He had "trouble communicating" with the children and he "continually" argued with staff.

In developing the case plan, the Department consulted with and sought input from the Tolowa Nation, the Yurok Tribe, and others. Father agreed to try the Men of the River program, but he did not agree to the remainder of the plan and refused to sign it. He said he did not need mental health or substance abuse treatment. At the July 2019 dispositional hearing, the

juvenile court removed the children from parental custody and ordered the Department to provide reunification services pursuant to the Department's case plan. The court directed Father to "participate in the reunification services stated in the case plan."

On January 13, 2020, the Department filed its six-month review report. The Department recommended that the parents continue to receive reunification services. According to the report, Father had attended Men of the River meetings. He had not scheduled a mental health intake appointment. Father had attended two sessions of the Tolowa Nation AOD program, but he had not complied with drug testing. He had only submitted to one test, on December 12, 2019, and it was positive for methamphetamine and marijuana. An AOD treatment review plan indicated Father had weak communication skills and little ability to keep track of appointments; Father was directed to meet with his counselor at least once per week. On January 27, 2019, the juvenile court found Father had made minimal progress and ordered the Department to provide further reunification services.

On July 1, 2020, the Department filed its twelve-month review report. The Department recommended that the juvenile court terminate reunification services and schedule a section 366.26 hearing to select a permanent plan for the children. The Department reported that Father had attended "some" Men of the River support group meetings. A previous Department social worker, Edwin Zavala, had transported Father to one of the meetings. Mr. Zavala and the tribal judge who facilitated the group spoke with Father "at length" about his "need to comply with the case plan" to have the children returned to his custody. They explained the case plan to Father, including that he needed to participate in at least three sessions with a mental health provider. Father seemed to gain insight during the meeting,

stating "[m]aybe . . . I have to choose between fighting the county and losing my kids, or just . . . doing what I have to do and getting them back huh?"

Unfortunately, Father did not thereafter comply with his case plan. The Department's July 2020 report stated that Father was dropped from his substance abuse program for noncompliance. Father continued to refuse to participate in drug testing and "was verbally aggressive when requested to drug test." Father attended a mental health intake appointment with UIHS, but the Department could not assess his progress thereafter due to his refusal to sign a release of information. On June 9, 2020, Father attended a Child and Family Team (CFT) meeting regarding B.J.'s placement, but Father's behavior was "erratic." He said B.J.'s foster placement was the "Devil's house."

In recommending denial of further reunification services, the Department opined additional services would not enable Father to reunify due to his "consistent history of failure to engage with his case plan, particularly when the components of his case plan have been explained to him not only by the Department, but also in conjunction with a tribal judge." The Department added that Father's "worrisome behaviors and mental health concerns continue to create significant impacts on all of his children during and after his visitations with [them]."

The juvenile court held the twelve-month review hearing on August 3, 2020. The court received the Department's report into evidence and received testimony from three Department social workers and Father. The supervising social worker testified about access to services during the COVID-19 pandemic. She testified that UIHS and the Tolowa AOD continued to provide services via Zoom or telephone. The Men of the River group continued to meet and visitation continued at lowered levels. The

supervising social worker did not believe Father's failure to reunify was due to the change in services during the pandemic, explaining, "if he had been completely engaged with all of his services, his drug testing, his other aspects, and then [COVID]-19 hit and . . . he stopped complying, I would argue yeah, the pandemic had a humongous impact. But if you look at his compliance up to that, it was still marginal at best." She stated that, although the nature of the services changed during the pandemic, Father's "access to those services and the tools they can still provide has still been available to him." She observed that Father's refusal to submit to drug testing meant he had "21 to 24 presumptive positive drug tests." She testified Father yelled and swore at Department staff.

Dixie Martin was Father's social worker since mid-May 2020; she met with Mr. Zavala to transfer Father's case to her. She testified regarding the June 2020 CFT meeting. Father sat next to B.J. and told B.J. "he's living with the devil and in the devil's house." She continued, "His words were loud and vulgar. He would use obscenities. It was very difficult to maintain control of the family team meeting." She had intended to talk to Father about his case plan at the meeting, but she was unable to do so because Father's behavior caused the meeting to end early. She had spoken to Father a "small handful" times since taking on the case. There were a "few times" she had difficulty contacting him, but she had more success using "social service aids" in the community "to make contact . . . to get him to come in."

The social worker assigned to the case between jurisdiction and disposition testified she met with Father in June 2019 and went over "each aspect" of the case plan. He refused to sign the case plan because he did not believe he had a substance abuse problem or needed mental health treatment.

Father testified that he did not know what was in his case plan. He stated, "[y]ou know, they are not really talking to me. That's the bottom line. They are really not communicating with me." He believed services were not available to him during the pandemic. He testified he attended the Men of the River program about five or six times, but he believed the program was unavailable during the pandemic.

At the conclusion of presentation of evidence, the tribal representative from the Tolowa Nation expressed support for the Department's recommendations. In announcing its ruling, the juvenile court stated, "I have observed basically every time that [Father] is in court, but worse today than ever, active resistance. Not just quiet, reflective resistance, not doing it, it's just outspoken, active, offensive resistance." The court stated the testimony showed "there was resistance from the beginning . . . basically failure to comply throughout." The court found that returning the children would place them at substantial risk of harm and that both active and reasonable efforts were made to prevent the breakup of the family. The court terminated reunification services and continued the matter for a section 366.26 hearing on December 7, 2020 to select a permanent plan for the children.

DISCUSSION

Father contends there was no substantial evidence to sustain a finding by clear and convincing evidence that the Department engaged in active efforts to prevent the breakup of his Indian family or that that the Department provided him with reasonable services. We reject the claims.

I. *Legal Standards*

The Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) "provides that any party seeking foster care placement or termination of parental rights of an Indian child must first satisfy the court that 'active

efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.' (25 U.S.C. § 1912(d).)" (*In re A.L.* (2015) 243 Cal.App.4th 628, 638; see also § 361.7, subd. (a); § 366.26, subd. (c)(2)(B)(i).) "What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers." (§ 361.7, subd. (b).)

In 2018, section 224.1 was amended to incorporate a new federal definition of "active efforts" for purposes of the ICWA. (§ 224.1, subd. (f) (as amended by Stats. 2018, ch. 833, § 3, eff. Jan. 1, 2019); 25 C.F.R. § 23.2.) Section 224.1, subdivision (f) defines "active efforts" as "affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with their family. If an agency is involved in an Indian child custody proceeding, active efforts shall involve assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts shall be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and shall be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts shall be tailored to the facts and circumstances of the case . . . ." Section 224.1, subdivision (f) also lists eleven examples of active efforts, including "Identifying appropriate services and helping the parents

overcome barriers, including actively assisting the parents in obtaining those services." (§ 224.1, subd. (f)(2).)

In addition, a juvenile court "may not set a section 366.26 hearing . . . unless it finds by clear and convincing evidence reasonable services have been offered or provided to the family." (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424.)[3] "The 'adequacy of reunification plans and the reasonableness of the [Agency's] efforts are judged according to the circumstances of each case.' [Citation.] To support a finding reasonable services were offered or provided, 'the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult . . . .' " (*Id.* at p. 1426.)

The active efforts and reasonable services findings are reviewed under the substantial evidence standard, which requires the reviewing court to review " ' " 'the record in a light most favorable to the judgment and … uphold the trial court's findings unless it can be said that no rational factfinder could reach the same conclusion.' " ' " (*C.F. v. Superior Court*, *supra*, 230 Cal.App.4th at p. 239.)

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[3] Prior court of appeal decisions "have construed active efforts to be essentially equivalent to reasonable efforts to provide or offer reunification services in a non-ICWA case." (*In re C.B.* (2010) 190 Cal.App.4th 102, 134; see also *C.F. v. Superior Court* (2014) 230 Cal.App.4th 227, 239.) Father appears to suggest the definition of "active efforts" in section 224.1, subdivision (f) requires a greater showing, although he does not specify how it does so. We need not determine in the present case whether there is a difference between "active efforts" and "reasonable services" in light of section 224.1, subdivision (f), because the Department's efforts satisfy both standards.

II. *Analysis*

At the outset, we observe Father does not argue the Department's case plan was inadequate or failed to address any of the obstacles to reunification, and he does not argue the Department failed to identify providers and give Father the necessary information to contact them and arrange services. Father does make several conclusory assertions that the Department failed to make active efforts in certain respects, but he fails to present authority or analysis why the Department's efforts were inadequate. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 [when an appellant fails to support a point "with reasoned argument and citations to authority, we treat the point as waived"].) For example, Father asserts the Department failed to identify "community resources." (§ 224.1, subd. (f)(8).) But the record shows the Department referred Father to the Tolowa Nation AOD program and the Yurok Men of the River program, and a Department social worker drove Father to the Men of the River program and engaged in a lengthy conversation with Father and the program facilitator, a tribal judge. (See *In re K.B.* (2009) 173 Cal.App.4th 1275, 1287 ["It is abundantly clear that [the department] did more than merely draw up a reunification plan and leave the mother to use her own resources to bring it to fruition."].)

The core of Father's argument that the Department failed to make active efforts or provide reasonable services is his claim that during the COVID-19 pandemic, at the end of his reunification period, the Department failed to communicate with him frequently enough or provide him enough assistance in meeting his case plan requirements. Father asserts that the Department "g[ave] up on father around the time of the COVID-19 outbreak" and that "[t]he record reflects that no one from the Department reached out to father to inform him about what [e]ffect COVID-19 would have on his case

plan services . . . ." However, the supervising social worker testified that the providers *were* continuing to provide services during the pandemic, albeit by telephone or video. Moreover, Ms. Martin, Father's social worker after mid-May, testified she tried to contact Father a few times, but had difficulty reaching him. Nevertheless, she persisted and contacted him through aid workers in the community. (See *C.F. v. Superior Court*, *supra*, 230 Cal.App.4th at p. 242 [noting agency's "multiple, often unsuccessful, efforts to contact Mother, to meet with her, and to encourage her to comply with her case plan"].)

The record also shows that Father's case plan was explained to him both early on in the dependency proceeding and in the meeting with social worker Zavala and the Yurok tribal judge who facilitated the Men of the River program. Father claims the Department did not monitor his progress closely enough or consider alternate ways for him to meet his case plan, but the evidence shows Father was uncooperative and aggressive throughout the dependency proceeding, including at the June 2020 CFT meeting. The juvenile court could reasonably infer that Father's behavior frustrated the Department's efforts to monitor and work with him. Further, it is not apparent what alternate mental health and substance abuse services the Department could have provided Father given his refusal to acknowledge he had needs in those areas. Father does not dispute that those services, as well as drug testing, were appropriate aspects of his case plan.

It does appear the Department could have communicated more frequently with Father during the pandemic and that the mid-May change in social workers may have resulted in some temporary disruption. But part of that appears to have been due to the difficulty in reaching Father. In any event, "[t]he standard is not whether the services provided were the best that

might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547; accord *In re Christian K.* (2018) 21 Cal.App.5th 620, 628, fn. 5.) Further, the evidence showed that Father was hostile and uncooperative throughout the dependency proceeding. Given Father's "active resistance" to the Department (in the words of the juvenile court), we cannot say the Department's level of contact and efforts to assist Father were unreasonable or failed to constitute active efforts. (See *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220 ["Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent."]; *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5 ["The requirement that reunification services be made available to help a parent overcome those problems which led to the dependency of his or her minor children is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions."]; accord *In re T.W.-1* (2017) 9 Cal.App.5th 339, 348;[4] cf. *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1249–1250 [the mother was "reluctant" and "recalcitrant" and her "pugnacious

[4] By comparison, in *In re T.W.-1*, *supra*, 9 Cal.App.5th 339, a parent appealed from a reasonable services determination at the six-month review hearing. The court of appeal found no reasonable services where, among other things, it was not until more than three months after the disposition hearing that the parent was provided contact information for service providers. (*Id.* at p. 346.) The court of appeal rejected the suggestion that Father's lack of engagement excused the department's failings, because "Father's lack of participation had no bearing on the three-month delay in providing him with contact information for service providers, the failure to provide any services relating to substance abuse and housing, and the failure to establish regular visitation." (*Id.* at p. 348.) In the present case, Father does not contend he was provided inadequate or untimely information about service providers; the record shows the obstacle was Father's affirmative refusal to accept and participate in critical components of his case plan.

personality made her problematic to deal with," but she attempted to comply with her case plan].) Substantial evidence supports the juvenile court's findings that the Department made active efforts and provided reasonable services.

DISPOSITION

The petition is denied.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BURNS, J.

(A160724)